

NEWS



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State of New Jersey
Department of Labor
PO Box 110
Trenton, New Jersey
08625-0110

Notice of Proposed Amendment

RE:

DIVISION OF WORKERS' COMPENSATION
Rules of the Division of Workers' Compensation
Requests for Camera and Audio Coverage of Proceedings;
Formal Claims; Uninsured Employer's Fund
Proposed New Rule: N.J.A.C. 12:235-1.4
Proposed Amendments: N.J.A.C. 12:235-
3.1, 3.2, 3.9, 3.10, 7.2, 7.3, 7.4, 7.6, and 7.7

Attached please find the above-referenced matter which was published in the March 15, 2004 New Jersey Register.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer at (609) 777-2960.

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Attachment

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(a)

DIVISION OF WORKERS' COMPENSATION

**Rules of the Division of Workers' Compensation
Requests for Camera and Audio Coverage of
Proceedings; Formal Claims; Uninsured
Employer's Fund**

**Proposed Amendments: N.J.A.C. 12:235-3.1, 3.2, 3.9,
3.10, 7.2, 7.3, 7.4, 7.6 and 7.7**

Proposed New Rule: N.J.A.C. 12:235-1.4

Authorized By: Albert G. Kroll, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c) and
34:16-64 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2004-96.

MONDAY, MARCH 15, 2004

A public hearing on the proposed amendments and new rules will be held on the following date at the following location:

Tuesday, April 6, 2004
10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of Regulatory Services (609) 984-3620 if you wish to be included on the list of speakers.

Submit written comments by May 14, 2004 to:

Frederick S. Cohen, Regulatory Officer
Office of Regulatory Services
New Jersey Department of Labor
13th Floor, Suite G, PO Box 110
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

If you need this document in Braille, large print or audiocassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

This rule proposal sets forth a new rule and amendments to the rules of the Division of Workers' Compensation. Preproposal review and discussions have been held with interested parties including the Commissioner of Labor's Advisory Council on Workers' Compensation.

Proposed N.J.A.C. 12:235-1.4, a new rule to provide public access to workers' compensation courts while ensuring fairness in proceedings, requires that all requests for still and television camera and audio coverage of proceedings be referred to the Chief Judge of Workers' Compensation. Such requests shall be considered under Department of Labor procedures and the guidelines established by the New Jersey Supreme Court for judicial proceedings.

The Supreme Court Guidelines permit (i) no more than two videotape cameras; (ii) no more than two still photographers; (iii) no more than one audio system for radio broadcasts; and (iv) no artificial lighting. The guidelines also require the media to obtain permission in advance and to position themselves in the areas designated. Movement of personnel and equipment is allowed only before or after the meeting or during recesses.

N.J.A.C. 12:235-3.1 contains the rules relating to the filing and processing of initial pleadings. The proposed amendments to N.J.A.C. 12:235-3.1(c)3 and 4 correct typographical errors and there is no substantive change. Proposed N.J.A.C. 12:235-3.1(f) adds a new subsection to establish the procedure for assigning cases to a particular vicinage. The priority order would be the petitioner's residence, the location of the respondent, or the site of the accident or exposure. Additionally, language has been deleted regarding filing procedures because these requirements are no longer necessary. Proposed N.J.A.C. 12:235-3.1(g) provides for the service of claim petitions. Personal service is required for a motion for default as set forth by the New Jersey Rules of Court.

N.J.A.C. 12:235-3.2 contains the procedures for the filing and processing of a Motion for Temporary Disability and/or Medical Benefits. Proposed N.J.A.C. 12:235-3.2(h) adds a procedure that allows a judge to order one respondent to pay workers' compensation benefits without prejudice when the only issue on motion is which respondent is liable. These payments would be made subject to an order of reimbursement in favor of such respondent if another respondent is later held liable for any of the medical or temporary disability benefits paid. Proposed N.J.A.C. 12:235-3.2(j) adds a requirement that every carrier or self-insured employer must designate a contact person to respond to issues concerning temporary disability and/or medical benefits until an attorney of record is designated to handle the case.

N.J.A.C. 12:235-3.9 contains the provisions concerning pre-trial conference procedures. Proposed N.J.A.C. 12:235-3.9(a)4i adds a provision that requires any party intending to use electronic media at trial to indicate such intent in writing on the pre-trial memorandum and identify the witness who will authenticate and testify about the electronic materials to be presented. Proposed N.J.A.C. 12:235-3.9(a)4ii adds a provision that allows a party to move to amend the pre-trial memorandum to include any necessary changes such as the introduction of electronic materials obtained subsequent to the pre-trial.

N.J.A.C. 12:235-3.10 contains the provisions concerning procedures for the conduct of formal hearings. Proposed N.J.A.C. 12:235-3.10(a)1i adds a provision that allows for a substitution of one attorney for another attorney by the filing of the Division's substitution of attorney form anytime up to the commencement of trial. However, the provision also provides that, if a substitution of attorney is requested at the time of trial or after trial has commenced, it must be approved by a judge of compensation. Proposed N.J.A.C. 12:235-3.10(a)1ii deletes superfluous language and adds the requirement that, when an attorney has already appeared for a client and later seeks to be relieved as counsel without another attorney being substituted into the case, then such attorney must file a motion to be relieved as counsel and give proper notice of such motion to the client. The amendment to N.J.A.C. 12:235-3.10(a)2 makes it clear under which circumstances a party may appear pro se. N.J.A.C. 12:235-3.10(r) follows the New Jersey Rules of Court with regard to subpoenas, except, as proposed for amendment, that the return date of subpoenas is the date of the workers' compensation proceeding, rather than the date of deposition (which is the date referred to by the New Jersey Rules of Court). The rule now refers to a "party" and deletes a reference to an "attorney-at-law of New Jersey" since parties may sometimes appear pro se before a Court of Compensation.

Subchapter 7 contains the rules concerning the Uninsured Employer's Fund (UEF). A number of substantive changes to this subchapter are proposed to provide for: more time for the petitioner to contact the Compensation Rating and Inspection Bureau when an employer appears to be uninsured, more specific information in the petitioner's certification in support of motions to join the UEF; more precise information from examining physicians, and notice of UEF reimbursement procedures. In addition, the amendments would allow the petitioner or petitioner's attorney to provide or supplement information whenever such information becomes known or available. Thus, proposed N.J.A.C. 12:235-7.2(a) requires a petitioner or petitioner's attorney to contact the Compensation Rating and Inspection Bureau in writing within 30 days (rather than the 15 days under subsection (b) of the current rule) after actual or constructive knowledge is obtained that the employer was uninsured on the date of the petitioner's alleged accident or occupational exposure. Proposed N.J.A.C. 12:235-7.2(b) requires a petitioner or petitioner's attorney who intends to seek benefits from the UEF to notify the UEF in writing within 30 days after actual or constructive knowledge is obtained that the employer was uninsured on the date of the petitioner's alleged accident or occupational exposure or after information is received from the Compensation Rating and Inspection Bureau stating that the respondent was uninsured. The proposed amendment to N.J.A.C. 12:235-7.2(c)1 deletes language made superfluous by other amendments. N.J.A.C. 12:235-7.2(c)3 contains only a minor amendment to direct a petitioner or petitioner's attorney to mail motions to join the UEF to PO Box 399 rather than CN 399 as stated in the current rule.

N.J.A.C. 12:235-7.3 lists a number of specific items of information required in the petitioner's certification in support of his or her motion to join the UEF. N.J.A.C. 12:235-7.3(a) is amended to clarify current practice by stating that the petitioner is only required to provide information that is known or available to him or her at the time the certification is made and allows the petitioner to later supplement statements as more information becomes known or available. N.J.A.C. 12:235-7.3(a)1, 3, 4, 5, 6, 10, 13, 17 and 18 are amended to add greater detail and specificity to the current rule on what should be provided in the certification in support of a motion to join the UEF.

N.J.A.C. 12:235-7.4 provides the UEF with an opportunity to review all medical bills/charges and order independent medical examinations of the petitioner when the UEF is or will likely become involved in the petitioner's case.

Proposed N.J.A.C. 12:235-7.4(b)1 provides that examining physicians may be asked to render an opinion regarding a casual relationship between an alleged accident or occupational exposure and a petitioner's current medical condition because such information is a critical element in a workers' compensation case. Proposed N.J.A.C. 12:235-7.4(b)2 deletes a reference to "appropriateness" and adds references to the necessity and reasonableness of charges for medical treatment which stem from the alleged accident or occupational exposure suffered by a benefit claimant. Proposed N.J.A.C. 12:235-7.4(b)5 deletes a reference to whether the petitioner requires further treatment and adds a reference to whether the petitioner has reached maximum medical improvement because this is the critical point in determining when payments by the UEF for the temporary disability period can or should end. Proposed N.J.A.C. 12:235-7.4(b)3, 4 and 6 add clarity and detail concerning the UEF's current practice in obtaining information from examining physicians. N.J.A.C. 12:235-7.4(c), as proposed for amendment,

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provides that the UEF will pay fees for medical examinations only when such examinations are ordered by the UEF. N.J.A.C. 12:235-7.4(d)1 contains only a non-substantive language amendment. Proposed N.J.A.C. 12:235-7.4(e) states current practice of when medical treatment may be paid by the UEF, that is, until the petitioner has reached maximum medical improvement.

Proposed N.J.A.C. 12:235-7.6(a)1 adds a provision that specifies what claims by governmental entities will be reimbursed by the UEF. Proposed N.J.A.C. 12:235-7.6(a)2 specifies that allowable reimbursements are to be made only after a proper order has been entered.

N.J.A.C. 12:235-7.7 contains provisions concerning UEF payments for petitioner attorney's fees. N.J.A.C. 12:235-7.7(a) is amended to add a clarification by stating that attorney fees based on permanency awards are excluded from those attorney fees the UEF may pay. The proposed deletion of N.J.A.C. 12:235-7.7(b)1 eliminates the current requirement for an affidavit of services in UEF cases.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rule will have a significant positive impact on both employers and employees, as well as the attorneys and insurance carriers who practice in the Workers' Compensation Court. The existing rules established procedures for the operation of the Workers' Compensation Court, established by statute as well as the administrative function of the Division of Workers' Compensation. The latter provide a mechanism for the adjudication of contested workers' compensation claims. The orderly resolution of such disputes provide a mechanism for payment of benefits to injured workers and also a legal forum in which to deny benefits where it is determined that a claimant's compensation claim is not job-related. This system has had a positive impact both on employees and employers, as well as insurance carriers and members of the bar who practice in the Workers' Compensation Court by allowing for monetary compensation to those whose merit same in an orderly manner through prescribed standards and practices.

Due to the increasing number of claims filed with the Division of Workers' Compensation and the administrative responsibilities attendant thereto, these rule amendments are proposed in order to further assist in the refinement and continued modernization of the adjudicatory process and thereby serve as an aid, and not a hindrance to those who interact with the Division and the compensatory process. In that regard, and contributing to the positive social impact which will flow from these rules, the Division has concluded that all requests for still and television cameras and audio equipment in the courtroom will be referred to the Chief Judge of Compensation who will determine the efficacy of the request based upon the guidelines therefor established by the State Supreme Court. This, in turn will conform to the practices of the Division of Compensation with those of the State Court system thus fostering a uniformity of approach to the subject of media access to court procedures.

Another important social impact will be that under the amended rules, a party, rather than only an attorney, may prepare a workers' compensation subpoena and authorize its service in the name of the Judge of Compensation to whom the case has been assigned. This change reflects the reality that pro se litigants must have the same rights as litigants who are represented by counsel. Therefore, the amended rules explicitly codify that due process necessity. Moreover, the amended rules will prove of assistance to those persons who seek to join the Uninsured Employers' Fund by requiring that in their individual certification contain only information that is available or known to them at the time the certification is submitted. The rules will allow the petitioner to supplement his or her certification as more information becomes available. This will broaden the accessibility of the UEF to those deserving of inclusion therein. Thus, administratively, the working public and their employers will benefit by the continued orderly review of compensation claims and the processing of claims before the Uninsured Employer's Fund.

In sum, the social impact of the proposed amendments and new rule be entirely positive and representative of the forward thrust of the Division of Workers' Compensation.

Economic Impact

The proposed amendments and new rule will ensure the continued orderly functioning of the Division of Workers' Compensation.

The proposed amendments and new rule do not add additional costs to the workers' compensation case process. There will be minor cost savings since attorneys will not have to file an affidavit of services to obtain an awarded fee in cases involving the Uninsured Employer's Fund. Some petitioners may

stand to benefit economically by virtue of the UEF assisting in the provision of medical care until they have reached maximum medical improvement. There will be no economic impact upon videographers, photographers or others as a result of these proposed amendments and new rule.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rule are not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments and new rule will have no impact on the creation or loss of jobs in this State.

Agriculture Industry Impact

The proposed amendments and new rule will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and new rule impose some compliance requirements upon attorneys, photographers, videographers and audiographers some of whom may be considered small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Attorneys filing motions for temporary disability or medical benefits will be required to comply with procedural measures attendant to the UEF. Photographers and others wishing to cover court proceedings must file a request and comply with the Supreme Court guidelines. If there are any administrative costs, such costs are expected to be minimal and attached to the ordinary course of doing business. It is not anticipated that any outside professional services or consultants will be needed in order to comply.

Smart Growth Impact

The proposed amendments and new rule will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

12:235-1.4 Still and television camera and audio coverage of proceedings

(a) All requests for still and television camera and audio coverage of proceedings shall be forwarded to the Chief Judge.

(b) Such requests shall be considered in accordance with the "New Jersey Supreme Court Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey," incorporated herein by references as amended and supplemented which may be obtained by requesting: Vicinage Operations Directive #10-03, October 8, 2003 from the Administrative Office of the Courts, Hughes Justice Complex, 25 West Market Street, PO Box 037, Trenton, New Jersey 08625-037.

[12:235-1.4 through] 12:235-1.5 (Reserved)

12:235-3.1 Initial pleadings

(a)-(b) (No change.)

(c) Petitions and answers filed electronically shall be accepted by the Division in lieu of paper pleadings provided:

1.-2. (No change.)

3. The filer makes an identical paper copy of the electronically submitted pleading and obtains thereon a verification by oath, affirmation or certification of the petitioner or respondent, as applicable, as to the accuracy [or] of the information set forth therein.

4. The filer shall retain, as an officer of the court, the duly verified pleading and shall make available to the Division and/or his or her adversary upon request.

5. (No change.)

(d)-(e) (No change.)

(f) [If a claim petition is filed on paper and the insurance carrier, third party administrator or designated legal representative of the respondent has requested to be and is approved by the Division to receive and send pleadings in electronic format, the Division shall forward the claim petition in electronic format as well as a paper copy of the claim petition to the insurance carrier, third party administrator or designated legal representative of the respondent.] Claim petitions will be assigned in the following priority order: the vicinage for the county where the

petitioner resides; the vicinage for the county where the respondent is situated; or the vicinage for the county where the accident or exposure occurred.

(g) A copy of the claim petition shall be forwarded by the Division to the respondent either electronically for electronic filers, by regular mail, or by registered mail return receipt requested if served pursuant to N.J.S.A. 34:15-55.1. Where a motion for default has been filed, the petitioner must provide proof that the claim petition and motion for default have also been served personally on the respondent, its agents, and/or corporate officers as applicable, pursuant to R. 4:4-4 of the New Jersey Rules of Court.

12:235-3.2 Motions for temporary disability and/or medical benefits

(a)-(g) (No change.)

(h) For motions where it appears the only issue involved is which carrier or employer is liable to petitioner for the benefits sought, a judge of compensation may order one carrier or employer to pay benefits without prejudice and subject to an order of reimbursement if another party is later held liable for such benefits.

[(h)](i) (No change in text.)

(j) Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, address, e-mail address, and fax number of the contact person shall be submitted to the Division. Whenever any of this information about the contact person needs to be updated, such updated information shall be submitted to the Division. After an answer is filed with the Division, the attorney of record for the respondent shall act as the contact person in the case.

12:235-3.9 Pre-trial conference

(a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:

1.-3. (No change.)

4. A pre-trial memorandum on a form prescribed by the Division shall be executed.

i. Any party that intends to utilize videos or other electronic media, including surveillance tapes, must indicate that such media will be utilized at trial and identify the witness who will authenticate and testify concerning the materials to be presented in the "Other Witness" section of the pre-trial memorandum or as an addendum to the pre-trial memorandum. A party is not required to provide or exhibit electronic information, including surveillance tapes, to another party prior to the other party's testimony under oath.

ii. A party may move to amend the pre-trial memorandum to include any necessary changes including the introduction of electronic materials obtained subsequent to the pre-trial; or

5. (No change.)

(b)-(d) (No change.)

12:235-3.10 Conduct of formal hearings

(a) The following concern appearances:

1. Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record [to appear and prosecute or defend any action in any formal hearing].

i. A substitution of attorney is permitted by filing a Substitution of Attorney (WC-10) form any time up to the commencement of a trial when another attorney is being substituted to represent a party. At or after the commencement of trial, a substitution of attorney must be approved by a Judge of Compensation.

ii. An attorney who has entered an appearance for a party must file a motion to be relieved as counsel when another attorney is not being substituted. Notice of such motion, including the date of the hearing, shall be given to the client to afford an opportunity to be heard on the motion.

2. Unless otherwise required by law to be represented by counsel and, subject to (a)1ii above, when an attorney has entered an appearance, a party may appear pro se.

3. (No change.)

(b)-(q) (No change.)

(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. [An attorney-at-law of New Jersey] A party may prepare a subpoena and authorize its service, in accordance with the [Rules of Civil Practice of New Jersey] New Jersey Rules of Court, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production. However, the return date of such subpoena will be the date of the workers' compensation proceeding instead of the date of deposition referred to by the New Jersey Rules of Court. A copy of the subpoena shall also be provided to the Judge of Compensation whose name appears on the subpoena.

(s)-(x) (No change.)

12:235-7.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder

(a) [An injured worker or his or her attorney shall notify the UEF within 30 days after the worker or his or her attorney knew or should have known that the employer was uninsured, or receives confirmation of non-insurance from the Compensation Rating and Inspection Bureau that benefits may be sought.] Petitioner or petitioner's attorney shall contact the Compensation Rating and Inspection Bureau for coverage information in writing within 30 days after the petitioner or the petitioner's attorney knew or should have known that the employer was uninsured or has received confirmation that the employer was uninsured on the date of the accident or occupational exposure alleged in the claim petition. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.

(b) [Petitioner's attorney shall contact the Compensation Rating and Inspection Bureau within 15 days in writing to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.] If benefits may be sought from the UEF, the petitioner or petitioner's attorney shall notify the UEF in writing within 30 days after the petitioner or petitioner's attorney knew or should have known that the employer was uninsured on the date of the accident or occupational exposure or has received information from the Compensation Rating and Inspection Bureau showing that the employer was uninsured on the date alleged.

(c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought [by or] against the uninsured employer.

1. [Petitioner's attorney or the petitioner shall file a motion to join the UEF.] When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.

2. (No change.)

3. A copy of the motion to join the UEF shall be served upon the Fund in the Office of Special Compensation Funds, [CN 399] PO Box 399, Trenton, New Jersey 08625-0399.

(d)-(f) (No change.)

12:235-7.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information if known or available to the petitioner and should be supplemented as such information becomes known or available to the petitioner:

1. The date of hire immediately preceding the date of the accident, injury or occupational exposure;

2. (No change.)

3. Copies of petitioner's W-2 forms for all dates of employment during the year in which the accident occurred;

4. Pay stubs for [salary] or other documentation in support of all wages received from respondent for [previous] the six months immediately preceding the date of the accident or occupational exposure;

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5. The total wages received from respondent for 12 months immediately preceding the accident, which includes salary, gratuities, services, in lieu of wages, meals or lodging;

6. The name, address (business and personal) and phone number of the respondent and any corporate officer or manager of the company;

7.-9. (No change.)

10. The [place] address and/or other identifying information about where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;

11.-12. (No change.)

13. [How soon after the accident was a physician contacted] The date on which a medical provider was first contacted concerning injuries sustained in the accident or occupational condition;

14.-16. (No change.)

17. [Any] A detailed listing of medical expenses which have been paid, the dates the medical services were provided, the names of individuals and entities providing such services, and the sources and amounts of such payments; and

[18. Who paid the medical expenses; and]

[19.]18. Whether or not the petitioner is receiving or has applied for Social Security, unemployment compensation, temporary disability insurance, disability insurance, pensions or any other wage-related benefits.

12:235-7.4 Medical bills; physician's examination

(a) (No change.)

(b) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF may become involved in a case. The examining physician [will] may be asked to offer an opinion on:

1. The causal relationship between the alleged accident or occupational exposure and the petitioner's current medical condition;

[1.]2. The [appropriateness] necessity of petitioner's previous and current medical treatment and the reasonableness of charges for such treatment for the alleged accident or occupational exposure;

[2.]3. (No change in text.)

[3.]4. Whether the petitioner is able to return to work; [and]

[4.]5. Whether or not petitioner required further treatment[.] to reach maximum medical improvement; and

PROPOSALS

6. Any other pertinent issues or information.

(c) Fees for the independent medical evaluation ordered by the UEF shall be paid by the UEF.

(d) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be [chargeable to] payable by the UEF.

(e) The UEF may provide for medical care to assist the petitioner until he or she has reached maximum medical improvement.

12:235-7.6 Payments from the UEF

(a) Payments from the UEF shall be made only in accordance with N.J.S.A. 34:15-120.4.

1. The UEF shall not reimburse governmental agencies for benefits paid to or on behalf of the petitioner except for benefits or expenses conditionally paid under the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.), New Jersey Medicaid reimbursement statute (N.J.S.A. 30:4D-7.1), and the Federal Medicare Secondary Provider Statute (42 U.S.C. §1395y). Such reimbursements for medical expenses are subject to the limitations set forth in N.J.A.C. 12:235-7.4(e).

2. Payments under (a)1 above can be made only after a Judge of Compensation has ordered the uninsured employer to reimburse the agency or agencies making the conditional payments and the uninsured employer has defaulted on making such reimbursements within the time period set forth by N.J.S.A. 34:15-120.3 and 34:15-120.4.

12:235-7.7 Attorney fees

(a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner and shall exclude any fees awarded in association with permanent disability benefits.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

[1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.]